

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In Re: Novartis Wage and Hour Litigation <i>This document relates to: All Actions</i>	1:06-md-1794 (PAC) 1:06-cv-02268 (PAC) 1:06-cv-11475 (PAC)
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**DEFENDANTS NOVARTIS CORPORATION, NOVARTIS FINANCE CORPORATION,
AND NOVARTIS SERVICES, INC.'S STATEMENT OF UNCONTESTED
MATERIAL FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule 56.1 defendants Novartis Corporation, Novartis Finance Corporation, and Novartis Services, Inc. hereby submit this Statement of Uncontested Material Facts in support of their motion for summary judgment.

1. Novartis Corporation (“Corporation”) is a holding company incorporated under the laws of New York. It has offices in New York City and East Hanover, New Jersey. NCORP001509-45 (Novartis Corporation Articles of Incorporation) (Ex. 3); Declaration of James D. Robinson (“Robinson Decl.”) ¶ 3 (Mar. 30, 2007) (Ex. 13).

2. Novartis Finance Corporation (“Finance”) is incorporated under the laws of New York. Its offices are located in New York City. Finance is a wholly-owned subsidiary of Corporation. Robinson Decl. ¶ 4 (Ex. 13); NCORP1389, 1768-71 (U.S. Organizational Charts) (Ex. 10); Finance Articles of Incorporation (Ex. 7).

3. Novartis Services, Inc. (“Services”) is incorporated under the laws of Delaware. Its offices are located in New Jersey and in New York City. Services is a wholly-owned subsidiary of Corporation. Robinson Decl. ¶ 5 (Ex. 13); NCORP1389, 1768-71 (U.S. Organizational Charts) (Ex. 10); Services Articles of Incorporation (Ex. 9).

4. Defendant Novartis Pharmaceuticals Corporation (“NPC”) is one of the largest manufacturers of brand name pharmaceutical products in the United States. It is based in East

Hanover, New Jersey and employs over 11,000 individuals nationwide. See Website (<http://www.pharma.us.novartis.com/novartis/highlights.jsp?checked=y>) (last visited Mar. 28, 2007) (Ex. 17).

5. The Novartis group of companies is diverse and comprises over 360 independent affiliates operating in 140 countries. See Website (<http://www.novartis.com/careers/divisions/index.shtml>) (last visited Mar. 28, 2007) (Ex. 1).

6. In 2006 NPC earned sales of \$9.472 billion. See Novartis AG, U.S. Securities & Exchange Comm'n, Form 20-F, at 108, filed Jan. 31, 2007 (Ex. 18).

7. NPC is a subsidiary of Finance, which is a subsidiary of Corporation. U.S. Organizational charts (NCORP001389, 1768-71) (2001-2005) (Ex. 10).

8. Corporation, Finance, Services, and NPC are each incorporated separately and governed by separate boards of directors. Corporation Articles of Incorporation (NCORP001509-45) (Ex. 2); Corporation Bd. Members (NCORP001586) (Ex. 3); Finance Bd. Members (Ex. 6); Finance Articles of Incorporation (Ex. 7); Services Bd. Members (Ex. 8); Services Articles of Incorporation (Ex. 9); NPC Bd. Members (NPC-0000001) (Ex. 4); NPC Articles of Incorporation (NPC-0000002-05, 09, 48-55) (Ex. 5); Robinson Decl. ¶ 12 (Ex. 13).

9. Corporation, Finance, and Services do not research, develop, produce, market, or sell pharmaceutical products or play any role in NPC's daily business activities. Resp. to Interrog. No. 3 (Ex. 11); Deposition of Wayne Merkelson ("Merkelson Dep.") at 253:4-11 (Ex. 16); Deposition of Gary Rosenthal ("Rosenthal Dep.") at 135:7-135:14 (Oct. 28, 2005) (Ex. 19); Robinson Decl. ¶ 9 (Ex. 13).

10. Corporation, Finance, and Services are not involved in the day-to-day operations of NPC. Merkelson Dep. at 188:15-20 (Sept. 27, 2005) (Ex. 16); Deposition of James Robinson

(“11/4 Robinson Dep.”) at 299:9-20 (Nov. 4, 2005) (Ex. 20); Rosenthal Dep. at 110:16-111:5; 115:17-116:10 (Oct. 28, 2005) (Ex. 19); Resp. to Interrog. No. 6 (Ex. 11); Robinson Decl. ¶ 10 (Ex. 13).

11. Corporation, Finance, and Services maintain separate bank accounts from NPC and do not share accounts receivable, accounts payable, inventories, or credit with NPC. Bank Statements (NCORP003264-69; 3277-3321) (Ex. 27); 11/4 Robinson Dep. at 301:7-302:18 (Ex. 20); Robinson Decl. ¶ 13 (Ex. 13).

12. NPC has borrowed money from Finance on an arm’s length basis at a fixed interest rate (ranging from 6.5% to 8.75% depending on the terms of the loan agreement). Rosenthal Dep. at 154:10-155:14 (Ex. 19); Rosenthal Dep. Exs. 8-12 (Ex. 28).

13. Corporation, Finance, Services, and NPC are each independently responsible for adopting their own policies and procedures, including human resources and employment policies. Resp. to Interrog. No. 11 (Ex. 11); 11/4 Robinson Dep. at 299:9-20 (Ex. 20); Robinson Decl. ¶¶ 14-16 (Ex. 13).

14. Corporation, Finance, and Services provide corporate and administrative services to a variety of companies in the Novartis group of companies in the United States, including NPC (brand name pharmaceutical products), Gerber Products Company (baby food and related products), Ciba Vision Corporation (eye care), Novartis Animal Health US, Inc. (veterinary products), Sandoz Inc. (generic pharmaceutical products), and several others. U.S. Organizational Charts (NCORP001389, 1768-71) (Ex. 10); Robinson Decl. ¶ 8 (Ex. 13).

15. The corporate and administrative services provided by Corporation, Finance, and Services for their subsidiaries include merger and acquisition services, intellectual property support, tax advice, tax return preparation (in jurisdictions in which consolidated returns are

required), group insurance purchasing, and stock plan administration. Resp. to Interrog. Nos. 3, 8 (Ex. 11); Novartis Corporation's Supp. Resp. to Doc. Reqs. & Interrogs. ("Supp. Resp.") at Interrog. No. 8 (Ex. 12); Robinson Decl. ¶ 8 (Ex. 13).

16. Corporation, Finance, and Services charge reasonable fees for the services they provide and, in turn, are charged reasonable fees for the services they purchase from other companies in the Novartis group of companies. See, e.g., Operating Service Agreement between Novartis Services, Inc. and NPC (NCORP001921-25) (Jan. 1, 2003) (Ex. 14); Summary of Intercompany Charges (NCORP003270-76) (2003-2005) (Ex. 15); Merkelson Dep. at 122:21-124:7 (Ex. 16).

17. NPC also provides services to Corporation, Finance, and Services for a fee. For example, NPC charges Corporation for services such as payroll administration and information technology support. Summary of Intercompany Charges (NCORP003270-3276) (Ex. 15); Operating Services Agreement (NCORP001921-25) (Ex. 14); Supp. Resp. Req. No. 32 & Interrog. No. 8 (Ex. 12).

18. Corporation, as shareholder in subsidiaries such as NPC, fulfills its investment stewardship obligations by inviting its subsidiaries to provide business reports at periodic board meetings. Merkelson Dep. at 243:24-245:3 (Ex. 16); Corporation Board of Directors Meeting Minutes (NCORP001567-1583 & NCORP001775-1820) (Ex. 29).

19. Corporation has its own human resources department that provides service to Corporation, Finance, and Services. Corporation's human resources department is separate and independent from NPC's human resources department. Robinson Decl. ¶ 14 (Ex. 13); 11/4 Robinson Dep. at 299:9-20 (Ex. 20); Resp. to Interrog. No. 11 (Ex. 11).

20. Corporation and NPC's separate human resources departments adopt and implement their own human resources and employment policies, and hire, compensate, promote, and fire their own employees. Neither company is required to obtain the approval of the other companies before making such decisions with respect to sales representatives, nor does such permission-seeking happen in practice. 11/4 Robinson Dep. at 299:9-20 (Ex. 20); Resp. to Interrog. No. 11 (Ex. 11); Robinson Decl. ¶ 16 (Ex. 13).

21. NPC's human resources department is significantly larger than that of Corporation and has substantially more resources and expertise. Corporation occasionally decides to adopt, for its own employees, certain human resources policies NPC has created for its employees. 11/4 Robinson Dep. 222:24-223:19 (Ex. 20); Resp. to Interrog. No. 11 (Ex. 11); Robinson Decl. ¶ 15 (Ex. 13).

22. Corporation occasionally has purchased human resources training materials from NPC and the part-time services of an NPC employee, Lisa DiPaolo, who has provided human resources administrative support to Corporation for a fee. Deposition of James Robinson ("9/28 Robinson Dep.") at 128:2-129:2; 133:11-135:23 (Sept. 28, 2005) (Ex. 21); Supp. Resp. to Interrog. No. 12 (Ex. 22).

23. Plaintiffs had ample opportunity to take discovery on the separateness between NPC and Corporation, Finance, and Services, but failed to do so – apparently choosing to rely solely on the discovery taken in a related case involving some of these parties (discussed below).

24. Corporation, Finance, and Services issued limited interrogatories and document requests to plaintiffs on separateness grounds. Plaintiffs' responses confirm that none of them was ever employed by, or ever communicated with an employee of, Corporation, Finance, or Services. Pls. Resp. to Defs.' Reqs. for Prod. ("Pls. Doc. Resp.") (Ex. 23); Pls. Resp. to Defs.'

Interrogs. (“Pls. Interrogs. Resp.”) (Ex. 24); NWH000262, 504, 751, 1094, 2014 (paystubs) (Ex. 25); NWH000522, 662, 8383, 1981 (W-2 forms) (Ex. 26); Robinson Decl. ¶ 18 (Ex. 13).

25. In another litigation pending in this court, Corporation provided extensive discovery to plaintiffs concerning the relationship between Corporation (and Finance and Services) and NPC. Amy Velez, et al. v. Novartis Corporation, et al., 04-cv-9194 (GEL). That discovery described in pertinent part herein and in Corporation, Finance, and Services’ memorandum in support of its motion for summary judgment.

26. Up until November 2005, Corporation rented space from NPC in its Florham Park offices, and Corporation paid rent for the use of that space – at a rate of approximately \$1.1 million per year. See Summary of Intercompany Charges (NCORP003270-76) (Ex. 15); Robinson Decl. ¶ 11 (Ex. 13). The areas used by the two companies physically were separated by walls, and signs specifically designated which areas were used by Corporation and which areas were used by NPC. See 11/4 Robinson Dep. at 294:7-298:10 (Ex. 20); Rosenthal Dep. at 63:5-19; 64:21-65:23 (Ex. 19); Merkelson Dep. 25:11-27:7; 178:8-179:15 (Ex. 16); Robinson Decl. ¶ 11 (Ex. 13).

27. As of late November 2005, Corporation moved its Florham Park office space to East Hanover, New Jersey. Robinson Decl. ¶ 11 (Ex. 13). Corporation rents its new East Hanover office space from NPC at a comparable per-square-foot rate as the Florham Park space. See Robinson Decl. ¶ 11 (Ex. 13). As the Florham Park offices were, Corporation’s East Hanover offices physically are separated by walls from NPC’s offices and designated with company-specific signs. Id.

28. Corporation, Finance, and Services played no role in the alleged acts of NPC that plaintiffs complain of in this case and do not maintain any control of NPC’s labor relations.

Resp. to Interrog. No. 11 (Ex. 11); Robinson Decl. ¶¶ 14, 16-18 (Ex. 13); 11/4 Robinson Dep. at 299:9-20 (Ex. 20). Corporation, Finance, and Services observe all standard corporate formalities with respect to NPC. Resp. to Interrog. Nos. 3, 6 (Ex. 11); Robinson Decl. ¶¶ 8-13 (Ex. 13); Rosenthal Dep. at 110:16-111:5; 115:17-116:10; 135:7-14 (Ex. 19); Merkelson Dep. at 253:4-11 (Ex. 16); 11/4 Robinson Dep. at 299:9-20 (Ex. 20); NCORP001586 (Ex. 3); NPC-000001 (Ex. 4); Finance Board of Directors (Ex. 6); Services Board of Directors (Ex. 8).

New York, New York
Dated: April 2, 2007

WHITE & CASE LLP

By: /s/ Vincent R. FitzPatrick

Vincent R. FitzPatrick, Jr. (VF-1636)
Heather K. McDevitt (HM-9973)
Jack E. Pace III (JP-8688)

1155 Avenue of the Americas
New York, New York 10036
Telephone: (212) 819-8200

*Attorneys for Defendants Novartis Corporation,
Novartis Finance Corporation, and Novartis
Services, Inc.*